

AMENDED IN SENATE FEBRUARY 25, 2002

AMENDED IN ASSEMBLY MARCH 27, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1590

Introduced by Assembly Member Simitian

February 23, 2001

An act to amend ~~Section 1538.5~~ of Sections 422, 537e, 594, 594.1, 594.2, 594.6, 594.7, 594.8, and 12020 of, and to add Section 594.05 to, the Penal Code, relating to ~~criminal procedure~~ *crime*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1590, as amended, Simitian. ~~Criminal procedure: search or seizure hearing~~ *Crime*.

Existing law provides that any person who threatens injury in writing, verbally, or via an electronic communication device, to commit a crime which will result in death or great bodily injury, as specified, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

This bill would expand this provision to also include threats made by nonverbal conduct intended by the actor to be a substitute for oral or written verbal communication.

Existing law provides that any person who buys, sells, or has in his or her possession personal property from which the serial number has been removed is punishable by imprisonment in a county jail for up to 6 months if the value of the property does not exceed \$400.

This bill would provide that the punishment for buying, selling, or possessing personal property from which the serial number has been

removed would be imprisonment in the state prison or in a county jail not exceeding one year.

Existing law, as amended by an initiative statute, provides that every person who maliciously defaces, damages, or destroys real or personal property is guilty of vandalism. Existing law also provides that it is unlawful to furnish aerosol paint capable of defacing property to a minor.

This bill would recast these provisions and also provide that it would be unlawful to furnish a minor with acid. This bill would make it unlawful to possess acid with the intent to commit vandalism or graffiti.

Existing law defines brass knuckles and shurikens as metal weapons that are unlawful to manufacture, sell, or possess.

This bill would change the definitions of these weapons to include like weapons made of any material, including metal, plastic, wood or paper products, or composites. Because this bill would change the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would amend an initiative statute and in accordance with its provisions would require a $\frac{2}{3}$ vote for enactment by the Legislature.

~~Existing law provides with respect to a preliminary examination in a criminal case that the magistrate shall, upon motion of either party, exclude all potential and actual witnesses who have not been examined.~~

~~Existing law also authorizes either party to challenge the exclusion of any person under this provision and requires the magistrate, upon motion of either party, to hold a hearing, on the record, to determine if the person sought to be excluded is, in fact, a person excludable under this provision.~~

~~This bill would apply these provisions to a hearing held pursuant to a motion to return property or suppress evidence obtained as the result of a search or seizure.~~

~~Vote: majority $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.~~



The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1538.5 of the Penal Code is amended to~~
2 *SECTION 1. Section 422 of the Penal Code is amended to*
3 *read:*

4 422. Any person who willfully threatens to commit a crime
5 which will result in death or great bodily injury to another person,
6 with the specific intent that the statement, made verbally, in
7 writing, *by nonverbal conduct intended by the actor to be a*
8 *substitute for oral or written verbal expression*, or by means of an
9 electronic communication device, is to be taken as a threat, even
10 if there is no intent of actually carrying it out, which, on its face
11 and under the circumstances in which it is made, is so unequivocal,
12 unconditional, immediate, and specific as to convey to the person
13 threatened, a gravity of purpose and an immediate prospect of
14 execution of the threat, and thereby causes that person reasonably
15 to be in sustained fear for his or her own safety or for his or her
16 immediate family’s safety, shall be punished by imprisonment in
17 the county jail not to exceed one year, or by imprisonment in the
18 state prison.

19 For the purposes of this section, “immediate family” means any
20 spouse, whether by marriage or not, parent, child, any person
21 related by consanguinity or affinity within the second degree, or
22 any other person who regularly resides in the household, or who,
23 within the prior six months, regularly resided in the household.

24 “Electronic communication device” includes, but is not limited
25 to, telephones, cellular telephones, computers, video recorders,
26 fax machines, or pagers. “Electronic communication” has the
27 same meaning as the term defined in Subsection 12 of Section
28 2510 of Title 18 of the United States Code.

29 *SEC. 2. Section 537e of the Penal Code is amended to read:*

30 537e. (a) Any person who knowingly buys, sells, receives,
31 disposes of, conceals, or has in his or her possession any personal
32 property from which the manufacturer’s serial number,
33 identification number, electronic serial number, or any other
34 distinguishing number or identification mark has been removed,
35 defaced, covered, altered, or destroyed, is guilty of a public
36 offense, punishable as follows:



1 (1) If the value of the property does not exceed four hundred
 2 dollars (\$400), by imprisonment in a county jail not exceeding ~~six~~
 3 ~~months~~ *one year*.

4 (2) If the value of the property exceeds four hundred dollars
 5 (\$400), by imprisonment in *the state prison, or by imprisonment*
 6 *in a county jail not exceeding one year.*

7 ~~(3) If the property is an integrated computer chip or panel of a~~
 8 ~~value of four hundred dollars (\$400) or more, by imprisonment in~~
 9 ~~the state prison for 16 months, or 2 or 3 years or by imprisonment~~
 10 ~~in a county jail not exceeding one year.~~

11 ~~For~~

12 *(b) For purposes of this subdivision, “personal property”*
 13 *includes, but is not limited to, the following:*

14 (1) Any television, radio, recorder, phonograph, telephone,
 15 piano, or any other musical instrument or sound equipment.

16 (2) Any washing machine, sewing machine, vacuum cleaner,
 17 or other household appliance or furnishings.

18 (3) Any typewriter, adding machine, dictaphone, or any other
 19 office equipment or furnishings.

20 (4) Any computer, ~~printed circuit, integrated chip or panel, or~~
 21 ~~other part of a computer or any computer component, including~~
 22 ~~the frame, chassis, or casing.~~

23 (5) Any tool or similar device, including any technical or
 24 scientific equipment.

25 (6) Any bicycle, exercise equipment, or any other
 26 entertainment or recreational equipment.

27 (7) Any electrical or mechanical equipment, contrivance,
 28 material, or piece of apparatus or equipment, *or any component*
 29 *part thereof.*

30 (8) Any clock, watch, watch case, or watch movement.

31 (9) Any vehicle or vessel, or any component part thereof.

32 ~~(b)~~

33 *(c) When property described in subdivision ~~(a)~~ (b) comes into*
 34 *the custody of a peace officer it shall become subject to the*
 35 *provision of Chapter 12 (commencing with Section 1407) of Title*
 36 *10 of Part 2, relating to the disposal of stolen or embezzled*
 37 *property. Property subject to this section shall be considered stolen*
 38 *or embezzled property for the purposes of that chapter, and prior*
 39 *to being disposed of, shall have an identification mark imbedded*
 40 *or engraved in, or permanently affixed to it.*



1 ~~(e)~~
 2 (d) This section does not apply to those cases or instances
 3 where any of the changes or alterations enumerated in subdivision
 4 (a) have been customarily made or done as an established practice
 5 in the ordinary and regular conduct of business, by the original
 6 manufacturer, or by his or her duly appointed direct representative,
 7 or under specific authorization from the original manufacturer.

8 SEC. 3. Section 594 of the Penal Code is amended to read:

9 594. (a) Every person who maliciously commits any of the
 10 following acts with respect to any real or personal property not his
 11 or her own, in cases other than those specified by state law, is guilty
 12 of vandalism:

13 (1) ~~Defaces with graffiti or other inscribed material.~~

14 ~~(2) Damages.~~

15 ~~(3)~~

16 (2) Destroys.

17 Whenever a person violates this subdivision with respect to real
 18 property, vehicles, signs, fixtures, furnishings, or property
 19 belonging to any public entity, as defined by Section 811.2 of the
 20 Government Code, or the federal government, it shall be a
 21 permissive inference that the person neither owned the property
 22 nor had the permission of the owner to deface, damage, or destroy
 23 the property.

24 (b) (1) If the amount of ~~defacement, damage, or destruction~~ is
 25 four hundred dollars (\$400) or more, vandalism is punishable by
 26 imprisonment in the state prison or in a county jail not exceeding
 27 one year, or by a fine of not more than ten thousand dollars
 28 (\$10,000), or if the amount of ~~defacement, damage, or destruction~~
 29 is ten thousand dollars (\$10,000) or more, by a fine of not more
 30 than fifty thousand dollars (\$50,000), or by both that fine and
 31 imprisonment.

32 (2) (A) If the amount of ~~defacement, damage, or destruction~~ is
 33 less than four hundred dollars (\$400), vandalism is punishable by
 34 imprisonment in a county jail not exceeding one year, or by a fine
 35 of not more than one thousand dollars (\$1,000), or by both that fine
 36 and imprisonment.

37 (B) If the amount of ~~defacement, damage, or destruction~~ is less
 38 than four hundred dollars (\$400), and the defendant has been
 39 previously convicted of vandalism or affixing graffiti or other
 40 inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6,



1 or 640.7, vandalism is punishable by imprisonment in a county jail
2 for not more than one year, or by a fine of not more than five
3 thousand dollars (\$5,000), or by both that fine and imprisonment.

4 ~~(c) Upon conviction of any person under this section for acts of~~
5 ~~vandalism consisting of defacing property with graffiti or other~~
6 ~~inscribed materials, the court may, in addition to any punishment~~
7 ~~imposed under subdivision (b), order the defendant to clean up,~~
8 ~~repair, or replace the damaged property himself or herself, or order~~
9 ~~the defendant, and his or her parents or guardians if the defendant~~
10 ~~is a minor, to keep the damaged property or another specified~~
11 ~~property in the community free of graffiti for up to one year.~~
12 ~~Participation of a parent or guardian is not required under this~~
13 ~~subdivision if the court deems this participation to be detrimental~~
14 ~~to the defendant, or if the parent or guardian is a single parent who~~
15 ~~must care for young children.~~

16 ~~(d) If a minor is personally unable to pay a fine levied for acts~~
17 ~~prohibited by this section, the parent of that minor shall be liable~~
18 ~~for payment of the fine. A court may waive payment of the fine,~~
19 ~~or any part thereof, by the parent upon a finding of good cause.~~

20 ~~(e) As used in this section, the term “graffiti or other inscribed~~
21 ~~material” includes any unauthorized inscription, word, figure,~~
22 ~~mark, or design, that is written, marked, etched, scratched, drawn,~~
23 ~~or painted on real or personal property.~~

24 ~~(f) The court may order any person ordered to perform~~
25 ~~community service or graffiti removal pursuant to paragraph (1)~~
26 ~~of subdivision (c) to undergo counseling.~~

27 ~~(g)~~

28 (d) This section shall become operative on January 1, 2002.

29 *SEC. 4. Section 594.05 is added to the Penal Code, to read:*

30 *594.05. (a) Every person who maliciously defaces with*
31 *graffiti or other inscribed material any real or personal property*
32 *not his or her own, in cases other than those specified by state law,*
33 *is guilty of vandalism. Whenever a person violates this subdivision*
34 *with respect to real property, vehicles, signs, fixtures, furnishings,*
35 *or property belonging to any public entity, as defined by Section*
36 *811.2 of the Government Code, or the federal government, it shall*
37 *be a permissive inference that the person neither owned the*
38 *property nor had the permission of the owner to deface the*
39 *property.*



1 (b) (1) If the amount of defacement is four hundred dollars
2 (\$400) or more, vandalism is punishable by imprisonment in the
3 state prison or in a county jail not exceeding one year, or by a fine
4 of not more than ten thousand dollars (\$10,000), or if the amount
5 of defacement is ten thousand dollars (\$10,000) or more, by a fine
6 of not more than fifty thousand dollars (\$50,000), or by both that
7 imprisonment and fine.

8 (2) (A) If the amount of defacement is less than four hundred
9 dollars (\$400), vandalism is punishable by imprisonment in a
10 county jail not exceeding one year, or by a fine of not more than one
11 thousand dollars (\$1,000), or by both that fine and imprisonment.

12 (B) If the amount of defacement is less than four hundred
13 dollars (\$400), and the defendant has been previously convicted
14 of vandalism or affixing graffiti or other inscribed material under
15 Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is
16 punishable by imprisonment in a county jail for not more than one
17 year, or by a fine of not more than five thousand dollars (\$5,000),
18 or by both that fine and imprisonment.

19 (c) Upon conviction of any person under this section for acts of
20 vandalism consisting of defacing property with graffiti or other
21 inscribed materials, the court may, in addition to any punishment
22 imposed under subdivision (b), order the defendant to clean up,
23 repair, or replace the damaged property himself or herself, or order
24 the defendant, and his or her parents or guardians if the defendant
25 is a minor, to keep the damaged property or another specified
26 property in the community free of graffiti for up to one year.
27 Participation of a parent or guardian is not required under this
28 subdivision if the court deems this participation to be detrimental
29 to the defendant, or if the parent or guardian is a single parent who
30 must care for young children.

31 (d) If a minor is personally unable to pay a fine levied for acts
32 prohibited by this section, the parent of that minor shall be liable
33 for payment of the fine. A court may waive payment of the fine, or
34 any part thereof, by the parent upon a finding of good cause.

35 (e) As used in this section, the term "graffiti or other inscribed
36 material" includes any unauthorized inscription, word, figure,
37 mark, or design, that is written, marked, etched, scratched, drawn,
38 or painted on real or personal property.



1 (f) *The court may order any person ordered to perform*
2 *community service or graffiti removal pursuant to paragraph (1)*
3 *of subdivision (c) to undergo counseling.*

4 SEC. 5. Section 594.1 of the Penal Code is amended to read:

5 594.1. (a) (1) It shall be unlawful for any person, firm, or
6 corporation, except a parent or legal guardian, to sell or give or in
7 any way furnish to another person, who is in fact under the age of
8 18 years, any *acid or* aerosol container of paint that is capable of
9 defacing property without first obtaining bona fide evidence of
10 majority and identity.

11 (2) For purposes of this subdivision, “bona fide evidence of
12 majority and identity” is any document evidencing the age and
13 identity of an individual which has been issued by a federal, state,
14 or local governmental entity, and includes, but is not limited to, a
15 motor vehicle operator’s license, a registration certificate issued
16 under the federal Selective Service Act, or an identification card
17 issued to a member of the armed forces.

18 (3) This subdivision shall not apply to the furnishing of six
19 ounces or less of an *acid or* aerosol container of paint to a minor
20 for the minor’s use or possession under the supervision of the
21 minor’s parent, guardian, instructor, or employer.

22 (4) Aerosol containers of paint, *acid or* related substances may
23 be furnished for use in school-related activities that are part of the
24 instructional program when used under controlled and supervised
25 situations within the classroom or on the site of a supervised
26 project. These containers *or substances* may not leave the
27 supervised site and shall be inventoried by the instructor. This use
28 shall comply with Section 32060 of the Education Code regarding
29 the safe use of toxic art supplies in schools.

30 (b) It shall be unlawful for any person under the age of 18 years
31 to purchase *acid or* an aerosol container of paint that is capable of
32 defacing property.

33 (c) Every retailer selling or offering for sale in this state *acid*
34 *or* aerosol containers of paint capable of defacing property shall
35 post in a conspicuous place a sign in letters at least three-eighths
36 of an inch high stating: “Any person who maliciously defaces real
37 or personal property with *acid or* paint is guilty of vandalism
38 which is punishable by a fine, imprisonment, or both.”

39 (d) It is unlawful for any person to carry on his or her person
40 and in plain view to the public *acid or* an aerosol container of paint



1 while in any posted public facility, park, playground, swimming
2 pool, beach, or recreational area, other than a highway, street,
3 alley, or way, unless he or she has first received valid authorization
4 from the governmental entity which has jurisdiction over the
5 public area.

6 As used in this subdivision, “posted” means a sign placed in a
7 reasonable location or locations stating it is a misdemeanor to
8 possess *acid or* a spray can of paint in that public facility, park,
9 playground, swimming pool, beach, or recreational area without
10 valid authorization.

11 (e) (1) It is unlawful for any person under the age of 18 years
12 to possess *acid or* an aerosol container of paint for the purpose of
13 defacing property while on any public highway, street, alley, or
14 way, or other public place, regardless of whether that person is or
15 is not in any automobile, vehicle, or other conveyance.

16 (2) As a condition of probation for any violation of this
17 subdivision, the court may order a defendant convicted of a
18 violation of this subdivision to perform community service as
19 follows:

20 (A) For a first conviction under this subdivision, community
21 service not to exceed 100 hours over a period not to exceed 90 days
22 during a time other than his or her hours of school attendance or
23 employment.

24 (B) If the person has a prior conviction under this subdivision,
25 community service not to exceed 200 hours over a period of 180
26 days during a time other than his or her hours of school attendance
27 or employment.

28 (C) If the person has two prior convictions under this
29 subdivision, community service not to exceed 300 hours over a
30 period not to exceed 240 days during a time other than his or her
31 hours of school attendance or employment.

32 (f) Violation of any provision of this section is a misdemeanor.
33 Upon conviction of any person under this section, the court may,
34 in addition to any other punishment imposed, if the jurisdiction has
35 adopted a graffiti abatement program as defined in subdivision (f)
36 of Section 594, order the defendant, and his or her parents or
37 guardians if the defendant is a minor, to keep the damaged property
38 or another specified property in the community free of graffiti, as
39 follows:

40 (1) For a first conviction under this section, for 90 days.



1 (2) If the defendant has a prior conviction under this section, for
2 180 days.

3 (3) If the defendant has two or more prior convictions under
4 this section, for 240 days.

5 Participation of a parent or guardian is not required under this
6 subdivision if the court deems this participation to be detrimental
7 to the defendant, or if the parent or guardian is a single parent who
8 must care for young children.

9 (g) The court may order any person ordered to perform
10 community service or graffiti removal pursuant to subdivision (e)
11 or (f) to undergo counseling.

12 *SEC. 6. Section 594.2 of the Penal Code is amended to read:*

13 594.2. (a) Every person who possesses a masonry or glass
14 drill bit, a carbide drill bit, a glass cutter, a grinding stone, an awl,
15 a chisel, a carbide scribe, an aerosol paint container, a felt tip
16 marker, *any acid capable of defacing, damaging, or destroying*
17 *property* or any other marking substance with the intent to commit
18 vandalism or graffiti, is guilty of a misdemeanor.

19 (b) As a condition of probation for any violation of this section,
20 the court may order the defendant to perform community service
21 not to exceed 90 hours during a time other than his or her hours of
22 school attendance or employment.

23 (c) For the purposes of this section:

24 (1) “Felt tip marker” means any broad-tipped marker pen with
25 a tip exceeding three-eighths of one inch in width, or any similar
26 implement containing an ink that is not water soluble.

27 (2) “Marking substance” means any substance or implement,
28 other than aerosol paint containers and felt tip markers, that could
29 be used to draw, spray, paint, etch, or mark.

30 *SEC. 7. Section 594.6 of the Penal Code is amended to read:*

31 594.6. (a) Every person who, having been convicted of
32 vandalism or affixing graffiti or other inscribed material under
33 Section 594, 594.05, 594.3, 594.4, or 640.7, or any combination
34 of these offenses, may be ordered by the court as a condition of
35 probation to perform community service not to exceed 300 hours
36 over a period not to exceed 240 days during a time other than his
37 or her hours of school attendance or employment. Nothing in this
38 subdivision shall limit the court from ordering the defendant to
39 perform a longer period of community service if a longer period
40 of community service is authorized under other provisions of law.



1 (b) In lieu of the community service that may be ordered
2 pursuant to subdivision (a), the court may, ~~if a jurisdiction has~~
3 ~~adopted a graffiti abatement program as defined in subdivision (f)~~
4 ~~of Section 594~~, order the defendant, and his or her parents or
5 guardians if the defendant is a minor, as a condition of probation,
6 to keep a specified property in the community free of graffiti for
7 up to one year. Participation of a parent or guardian is not required
8 under this subdivision if the court deems this participation to be
9 detrimental to the defendant, or if the parent or guardian is a single
10 parent who must care for young children.

11 (c) The court may order any person ordered to perform
12 community service or graffiti removal pursuant to subdivision (a)
13 or (b) to undergo counseling.

14 *SEC. 8. Section 594.7 of the Penal Code is amended to read:*

15 594.7. Notwithstanding subdivision (b) of Section 594, every
16 person who, having been convicted previously of *a violation of*
17 *Section 595, 594.05, or of vandalism under Section 594* for
18 maliciously defacing with graffiti or other inscribed material any
19 real or personal property not his or her own on two separate
20 occasions and having been incarcerated pursuant to a sentence, a
21 conditional sentence, or a grant of probation for at least one of the
22 convictions, is subsequently convicted of vandalism under Section
23 594, shall be punished by imprisonment in a county jail not
24 exceeding one year, or in the state prison.

25 *SEC. 9. Section 594.8 of the Penal Code is amended to read:*

26 594.8. (a) Any person convicted of possession of a
27 destructive implement with intent to commit graffiti or willfully
28 affixing graffiti under Section 594, 594.05, 594.2, 640.5, 640.6, or
29 640.7, where the offense was committed when he or she was under
30 the age of 18 years, shall perform not less than 24 hours of
31 community service during a time other than his or her hours of
32 school attendance or employment. One parent or guardian shall be
33 present at the community service site for at least one-half of the
34 hours of community service required under this section unless
35 participation by the parent, guardian, or foster parent is deemed by
36 the court to be inappropriate or potentially detrimental to the child.

37 (b) In lieu of the community service required pursuant to
38 subdivision (a), the court may, ~~if a jurisdiction has adopted a~~
39 ~~graffiti abatement program as defined in subdivision (f) of Section~~
40 ~~594~~, order the defendant, and his or her parents or guardians if the



1 defendant is a minor, to keep a specified property in the
2 community free of graffiti for at least 60 days. Participation of a
3 parent or guardian is not required under this subdivision if the
4 court deems this participation to be detrimental to the defendant,
5 or if the parent or guardian is a single parent who must care for
6 young children.

7 (c) The court may order any person ordered to perform
8 community service or graffiti removal pursuant to subdivision (a)
9 or (b) to undergo counseling.

10 *SEC. 10. Section 12020 of the Penal Code is amended to read:*

11 12020. (a) Any person in this state who does any of the
12 following is punishable by imprisonment in a county jail not
13 exceeding one year or in the state prison:

14 (1) Manufactures or causes to be manufactured, imports into
15 the state, keeps for sale, or offers or exposes for sale, or who gives,
16 lends, or possesses any cane gun or wallet gun, any undetectable
17 firearm, any firearm which is not immediately recognizable as a
18 firearm, any camouflaging firearm container, any ammunition
19 which contains or consists of any fléchette dart, any bullet
20 containing or carrying an explosive agent, any ballistic knife, any
21 multiburst trigger activator, any nunchaku, any short-barreled
22 shotgun, any short-barreled rifle, any metal knuckles, any belt
23 buckle knife, any leaded cane, any zip gun, any shuriken, any
24 unconventional pistol, any lipstick case knife, any cane sword, any
25 shobi-zue, any air gauge knife, any writing pen knife, any metal
26 military practice handgrenade or metal replica handgrenade, or
27 any instrument or weapon of the kind commonly known as a
28 blackjack, *brass knuckles*, slungshot, billy, sandclub, sap, or
29 sandbag.

30 (2) Commencing January 1, 2000, manufactures or causes to be
31 manufactured, imports into the state, keeps for sale, or offers or
32 exposes for sale, or who gives, or lends, any large-capacity
33 magazine.

34 (3) Carries concealed upon his or her person any explosive
35 substance, other than fixed ammunition.

36 (4) Carries concealed upon his or her person any dirk or dagger.

37 However, a first offense involving any metal military practice
38 handgrenade or metal replica handgrenade shall be punishable
39 only as an infraction unless the offender is an active participant in
40 a criminal street gang as defined in the Street Terrorism and



1 Enforcement and Prevention Act (Chapter 11 (commencing with
2 Section 186.20) of Title 7 of Part 1). A bullet containing or
3 carrying an explosive agent is not a destructive device as that term
4 is used in Section 12301.

5 (b) Subdivision (a) does not apply to any of the following:

6 (1) The sale to, purchase by, or possession of short-barreled
7 shotguns or short-barreled rifles by police departments, sheriffs'
8 offices, marshals' offices, the California Highway Patrol, the
9 Department of Justice, or the military or naval forces of this state
10 or of the United States for use in the discharge of their official
11 duties or the possession of short-barreled shotguns and
12 short-barreled rifles by peace officer members of a police
13 department, sheriff's office, marshal's office, the California
14 Highway Patrol, or the Department of Justice when on duty and the
15 use is authorized by the agency and is within the course and scope
16 of their duties and the peace officer has completed a training course
17 in the use of these weapons certified by the Commission on Peace
18 Officer Standards and Training.

19 (2) The manufacture, possession, transportation or sale of
20 short-barreled shotguns or short-barreled rifles when authorized
21 by the Department of Justice pursuant to Article 6 (commencing
22 with Section 12095) of this chapter and not in violation of federal
23 law.

24 (3) The possession of a nunchaku on the premises of a school
25 which holds a regulatory or business license and teaches the arts
26 of self-defense.

27 (4) The manufacture of a nunchaku for sale to, or the sale of a
28 nunchaku to, a school which holds a regulatory or business license
29 and teaches the arts of self-defense.

30 (5) Any antique firearm. For purposes of this section, "antique
31 firearm" means any firearm not designed or redesigned for using
32 rimfire or conventional center fire ignition with fixed ammunition
33 and manufactured in or before 1898 (including any matchlock,
34 flintlock, percussion cap, or similar type of ignition system or
35 replica thereof, whether actually manufactured before or after the
36 year 1898) and also any firearm using fixed ammunition
37 manufactured in or before 1898, for which ammunition is no
38 longer manufactured in the United States and is not readily
39 available in the ordinary channels of commercial trade.

40 (6) Tracer ammunition manufactured for use in shotguns.



1 (7) Any firearm or ammunition which is a curio or relic as
2 defined in Section 178.11 of Title 27 of the Code of Federal
3 Regulations and which is in the possession of a person permitted
4 to possess the items pursuant to Chapter 44 (commencing with
5 Section 921) of Title 18 of the United States Code and the
6 regulations issued pursuant thereto. Any person prohibited by
7 Section 12021, 12021.1, or 12101 of this code or Section 8100 or
8 8103 of the Welfare and Institutions Code from possessing
9 firearms or ammunition who obtains title to these items by bequest
10 or intestate succession may retain title for not more than one year,
11 but actual possession of these items at any time is punishable
12 pursuant to Section 12021, 12021.1, or 12101 of this code or
13 Section 8100 or 8103 of the Welfare and Institutions Code. Within
14 the year, the person shall transfer title to the firearms or
15 ammunition by sale, gift, or other disposition. Any person who
16 violates this paragraph is in violation of subdivision (a).

17 (8) Any other weapon as defined in subsection (e) of Section
18 5845 of Title 26 of the United States Code and which is in the
19 possession of a person permitted to possess the weapons pursuant
20 to the federal Gun Control Act of 1968 (Public Law 90-618), as
21 amended, and the regulations issued pursuant thereto. Any person
22 prohibited by Section 12021, 12021.1, or 12101 of this code or
23 Section 8100 or 8103 of the Welfare and Institutions Code from
24 possessing these weapons who obtains title to these weapons by
25 bequest or intestate succession may retain title for not more than
26 one year, but actual possession of these weapons at any time is
27 punishable pursuant to Section 12021, 12021.1, or 12101 of this
28 code or Section 8100 or 8103 of the Welfare and Institutions Code.
29 Within the year, the person shall transfer title to the weapons by
30 sale, gift, or other disposition. Any person who violates this
31 paragraph is in violation of subdivision (a). The exemption
32 provided in this subdivision does not apply to pen guns.

33 (9) Instruments or devices that are possessed by federal, state,
34 and local historical societies, museums, and institutional
35 collections which are open to the public, provided that these
36 instruments or devices are properly housed, secured from
37 unauthorized handling, and, if the instrument or device is a
38 firearm, unloaded.

39 (10) Instruments or devices, other than short-barreled shotguns
40 or short-barreled rifles, that are possessed or utilized during the



1 course of a motion picture, television, or video production or
2 entertainment event by an authorized participant therein in the
3 course of making that production or event or by an authorized
4 employee or agent of the entity producing that production or event.

5 (11) Instruments or devices, other than short-barreled shotguns
6 or short-barreled rifles, that are sold by, manufactured by, exposed
7 or kept for sale by, possessed by, imported by, or lent by persons
8 who are in the business of selling instruments or devices listed in
9 subdivision (a) solely to the entities referred to in paragraphs (9)
10 and (10) when engaging in transactions with those entities.

11 (12) The sale to, possession of, or purchase of any weapon,
12 device, or ammunition, other than a short-barreled rifle or
13 short-barreled shotgun, by any federal, state, county, city and
14 county, or city agency that is charged with the enforcement of any
15 law for use in the discharge of their official duties, or the
16 possession of any weapon, device, or ammunition, other than a
17 short-barreled rifle or short-barreled shotgun, by peace officers
18 thereof when on duty and the use is authorized by the agency and
19 is within the course and scope of their duties.

20 (13) Weapons, devices, and ammunition, other than a
21 short-barreled rifle or short-barreled shotgun, that are sold by,
22 manufactured by, exposed or kept for sale by, possessed by,
23 imported by, or lent by, persons who are in the business of selling
24 weapons, devices, and ammunition listed in subdivision (a) solely
25 to the entities referred to in paragraph (12) when engaging in
26 transactions with those entities.

27 (14) The manufacture for, sale to, exposing or keeping for sale
28 to, importation of, or lending of wooden clubs or batons to special
29 police officers or uniformed security guards authorized to carry
30 any wooden club or baton pursuant to Section 12002 by entities
31 that are in the business of selling wooden batons or clubs to special
32 police officers and uniformed security guards when engaging in
33 transactions with those persons.

34 (15) Any plastic toy handgrenade, or any metal military
35 practice handgrenade or metal replica handgrenade that is a relic,
36 curio, memorabilia, or display item, that is filled with a permanent
37 inert substance or that is otherwise permanently altered in a
38 manner that prevents ready modification for use as a grenade.



1 (16) Any instrument, ammunition, weapon, or device listed in
2 subdivision (a) that is not a firearm that is found and possessed by
3 a person who meets all of the following:

4 (A) The person is not prohibited from possessing firearms or
5 ammunition pursuant to Section 12021 or 12021.1 or paragraph
6 (1) of subdivision (b) of Section 12316 of this code or Section 8100
7 or 8103 of the Welfare and Institutions Code.

8 (B) The person possessed the instrument, ammunition,
9 weapon, or device no longer than was necessary to deliver or
10 transport the same to a law enforcement agency for that agency's
11 disposition according to law.

12 (C) If the person is transporting the listed item, he or she is
13 transporting the listed item to a law enforcement agency for
14 disposition according to law.

15 (17) Any firearm, other than a short-barreled rifle or
16 short-barreled shotgun, that is found and possessed by a person
17 who meets all of the following:

18 (A) The person is not prohibited from possessing firearms or
19 ammunition pursuant to Section 12021 or 12021.1 or paragraph
20 (1) of subdivision (b) of Section 12316 of this code or Section 8100
21 or 8103 of the Welfare and Institutions Code.

22 (B) The person possessed the firearm no longer than was
23 necessary to deliver or transport the same to a law enforcement
24 agency for that agency's disposition according to law.

25 (C) If the person is transporting the firearm, he or she is
26 transporting the firearm to a law enforcement agency for
27 disposition according to law.

28 (D) Prior to transporting the firearm to a law enforcement
29 agency, he or she has given prior notice to that law enforcement
30 agency that he or she is transporting the firearm to that law
31 enforcement agency for disposition according to law.

32 (E) The firearm is transported in a locked container as defined
33 in subdivision (d) of Section 12026.2.

34 (18) The possession of any weapon, device, or ammunition, by
35 a forensic laboratory or any authorized agent or employee thereof
36 in the course and scope of his or her authorized activities.

37 (19) The sale of, giving of, lending of, importation into this
38 state of, or purchase of, any large-capacity magazine to or by any
39 federal, state, county, city and county, or city agency that is
40 charged with the enforcement of any law, for use by agency



1 employees in the discharge of their official duties whether on or
2 off duty, and where the use is authorized by the agency and is
3 within the course and scope of their duties.

4 (20) The sale to, lending to, transfer to, purchase by, receipt of,
5 or importation into this state of, a large capacity magazine by a
6 sworn peace officer as defined in Chapter 4.5 (commencing with
7 Section 830) of Title 3 of Part 2 who is authorized to carry a firearm
8 in the course and scope of his or her duties.

9 (21) The sale or purchase of any large-capacity magazine to or
10 by a person licensed pursuant to Section 12071.

11 (22) The loan of a lawfully possessed large-capacity magazine
12 between two individuals if all of the following conditions are met:

13 (A) The person being loaned the large-capacity magazine is not
14 prohibited by Section 12021, 12021.1, or 12101 of this code or
15 Section 8100 or 8103 of the Welfare and Institutions Code from
16 possessing firearms or ammunition.

17 (B) The loan of the large-capacity magazine occurs at a place
18 or location where the possession of the large-capacity magazine is
19 not otherwise prohibited and the person who lends the
20 large-capacity magazine remains in the accessible vicinity of the
21 person to whom the large-capacity magazine is loaned.

22 (23) The importation of a large-capacity magazine by a person
23 who lawfully possessed the large-capacity magazine in the state
24 prior to January 1, 2000, lawfully took it out of the state, and is
25 returning to the state with the large-capacity magazine previously
26 lawfully possessed in the state.

27 (24) The lending or giving of any large-capacity magazine to
28 a person licensed pursuant to Section 12071, or to a gunsmith, for
29 the purposes of maintenance, repair, or modification of that
30 large-capacity magazine.

31 (25) The return to its owner of any large-capacity magazine by
32 a person specified in paragraph (24).

33 (26) The importation into this state of, or sale of, any
34 large-capacity magazine by a person who has been issued a permit
35 to engage in those activities pursuant to Section 12079, when those
36 activities are in accordance with the terms and conditions of that
37 permit.

38 (27) The sale of, giving of, lending of, importation into this
39 state of, or purchase of, any large-capacity magazine, to or by



1 entities that operate armored vehicle businesses pursuant to the
2 laws of this state.

3 (28) The lending of large-capacity magazines by the entities
4 specified in paragraph (27) to their authorized employees, while
5 in the course and scope of their employment for purposes that
6 pertain to the entity's armored vehicle business.

7 (29) The return of those large-capacity magazines to those
8 entities specified in paragraph (27) by those employees specified
9 in paragraph (28).

10 (30) (A) The manufacture of a large-capacity magazine for
11 any federal, state, county, city and county, or city agency that is
12 charged with the enforcement of any law, for use by agency
13 employees in the discharge of their official duties whether on or
14 off duty, and where the use is authorized by the agency and is
15 within the course and scope of their duties.

16 (B) The manufacture of a large-capacity magazine for use by
17 a sworn peace officer as defined in Chapter 4.5 (commencing with
18 Section 830) of Title 3 of Part 2 who is authorized to carry a firearm
19 in the course and scope of his or her duties.

20 (C) The manufacture of a large-capacity magazine for export
21 or for sale to government agencies or the military pursuant to
22 applicable federal regulations.

23 (31) The loan of a large-capacity magazine for use solely as a
24 prop for a motion picture, television, or video production.

25 (32) The purchase of a large-capacity magazine by the holder
26 of a special weapons permit issued pursuant to Section 12095,
27 12230, 12250, 12286, or 12305, for any of the following purposes:

28 (A) For use solely as a prop for a motion picture, television, or
29 video production.

30 (B) For export pursuant to federal regulations.

31 (C) For resale to law enforcement agencies, government
32 agencies, or the military, pursuant to applicable federal
33 regulations.

34 (c) (1) As used in this section, a "short-barreled shotgun"
35 means any of the following:

36 (A) A firearm which is designed or redesigned to fire a fixed
37 shotgun shell and having a barrel or barrels of less than 18 inches
38 in length.

39 (B) A firearm which has an overall length of less than 26 inches
40 and which is designed or redesigned to fire a fixed shotgun shell.



1 (C) Any weapon made from a shotgun (whether by alteration,
2 modification, or otherwise) if that weapon, as modified, has an
3 overall length of less than 26 inches or a barrel or barrels of less
4 than 18 inches in length.

5 (D) Any device which may be readily restored to fire a fixed
6 shotgun shell which, when so restored, is a device defined in
7 subparagraphs (A) to (C), inclusive.

8 (E) Any part, or combination of parts, designed and intended
9 to convert a device into a device defined in subparagraphs (A) to
10 (C), inclusive, or any combination of parts from which a device
11 defined in subparagraphs (A) to (C), inclusive, can be readily
12 assembled if those parts are in the possession or under the control
13 of the same person.

14 (2) As used in this section, a “short-barreled rifle” means any
15 of the following:

16 (A) A rifle having a barrel or barrels of less than 16 inches in
17 length.

18 (B) A rifle with an overall length of less than 26 inches.

19 (C) Any weapon made from a rifle (whether by alteration,
20 modification, or otherwise) if that weapon, as modified, has an
21 overall length of less than 26 inches or a barrel or barrels of less
22 than 16 inches in length.

23 (D) Any device which may be readily restored to fire a fixed
24 cartridge which, when so restored, is a device defined in
25 subparagraphs (A) to (C), inclusive.

26 (E) Any part, or combination of parts, designed and intended
27 to convert a device into a device defined in subparagraphs (A) to
28 (C), inclusive, or any combination of parts from which a device
29 defined in subparagraphs (A) to (C), inclusive, may be readily
30 assembled if those parts are in the possession or under the control
31 of the same person.

32 (3) As used in this section, a “nunchaku” means an instrument
33 consisting of two or more sticks, clubs, bars or rods to be used as
34 handles, connected by a rope, cord, wire, or chain, in the design of
35 a weapon used in connection with the practice of a system of
36 self-defense such as karate.

37 (4) As used in this section, a “wallet gun” means any firearm
38 mounted or enclosed in a case, resembling a wallet, designed to be
39 or capable of being carried in a pocket or purse, if the firearm may
40 be fired while mounted or enclosed in the case.



1 (5) As used in this section, a “cane gun” means any firearm
2 mounted or enclosed in a stick, staff, rod, crutch, or similar device,
3 designed to be, or capable of being used as, an aid in walking, if
4 the firearm may be fired while mounted or enclosed therein.

5 (6) As used in this section, a “fléchette dart” means a dart,
6 capable of being fired from a firearm, that measures
7 approximately one inch in length, with tail fins that take up
8 approximately five-sixteenths of an inch of the body.

9 (7) As used in this section, “~~metal brass~~ knuckles” means any
10 device or instrument made ~~wholly or partially of metal~~ of any
11 material, including metal, plastic, wood or paper products, or
12 composites, and which ~~is~~ may be worn for purposes of offense or
13 defense in or on the hand and which either protects the wearer’s
14 hand while striking a blow or increases the force of impact from
15 the blow or injury to the individual receiving the blow. The ~~metal~~
16 material contained in the device may help support the hand or fist,
17 provide a shield to protect it, or consist of projections or studs
18 which would contact the individual receiving a blow.

19 (8) As used in this section, a “ballistic knife” means a device
20 that propels a knifelike blade as a projectile by means of a coil
21 spring, elastic material, or compressed gas. Ballistic knife does not
22 include any device which propels an arrow or a bolt by means of
23 any common bow, compound bow, crossbow, or underwater spear
24 gun.

25 (9) As used in this section, a “camouflaging firearm
26 container” means a container which meets all of the following
27 criteria:

28 (A) It is designed and intended to enclose a firearm.

29 (B) It is designed and intended to allow the firing of the
30 enclosed firearm by external controls while the firearm is in the
31 container.

32 (C) It is not readily recognizable as containing a firearm.

33 “Camouflaging firearm container” does not include any
34 camouflaging covering used while engaged in lawful hunting or
35 while going to or returning from a lawful hunting expedition.

36 (10) As used in this section, a “zip gun” means any weapon or
37 device which meets all of the following criteria:

38 (A) It was not imported as a firearm by an importer licensed
39 pursuant to Chapter 44 (commencing with Section 921) of Title 18



1 of the United States Code and the regulations issued pursuant
2 thereto.

3 (B) It was not originally designed to be a firearm by a
4 manufacturer licensed pursuant to Chapter 44 (commencing with
5 Section 921) of Title 18 of the United States Code and the
6 regulations issued pursuant thereto.

7 (C) No tax was paid on the weapon or device nor was an
8 exemption from paying tax on that weapon or device granted under
9 Section 4181 and Subchapters F (commencing with Section 4216)
10 and G (commencing with Section 4221) of Chapter 32 of Title 26
11 of the United States Code, as amended, and the regulations issued
12 pursuant thereto.

13 (D) It is made or altered to expel a projectile by the force of an
14 explosion or other form of combustion.

15 (11) As used in this section, a “shuriken” means any
16 instrument, without handles, consisting of a ~~metal~~ plate *made of*
17 *any material, including, metal, plastic, wood or paper products,*
18 *or composites, and* having three or more radiating points with one
19 or more sharp edges and designed in the shape of a polygon, trefoil,
20 cross, star, diamond, or other geometric shape for use as a weapon
21 for throwing.

22 (12) As used in this section, an “unconventional pistol” means
23 a firearm that does not have a rifled bore and has a barrel or barrels
24 of less than 18 inches in length or has an overall length of less than
25 26 inches.

26 (13) As used in this section, a “belt buckle knife” is a knife
27 which is made an integral part of a belt buckle and consists of a
28 blade with a length of at least 2¹/₂ inches.

29 (14) As used in this section, a “lipstick case knife” means a
30 knife enclosed within and made an integral part of a lipstick case.

31 (15) As used in this section, a “cane sword” means a cane,
32 swagger stick, stick, staff, rod, pole, umbrella, or similar device,
33 having concealed within it a blade that may be used as a sword or
34 stiletto.

35 (16) As used in this section, a “shobi-zue” means a staff,
36 crutch, stick, rod, or pole concealing a knife or blade within it
37 which may be exposed by a flip of the wrist or by a mechanical
38 action.



1 (17) As used in this section, a “leaded cane” means a staff,
2 crutch, stick, rod, pole, or similar device, unnaturally weighted
3 with lead.

4 (18) As used in this section, an “air gauge knife” means a
5 device that appears to be an air gauge but has concealed within it
6 a pointed, metallic shaft that is designed to be a stabbing
7 instrument which is exposed by mechanical action or gravity
8 which locks into place when extended.

9 (19) As used in this section, a “writing pen knife” means a
10 device that appears to be a writing pen but has concealed within it
11 a pointed, metallic shaft that is designed to be a stabbing
12 instrument which is exposed by mechanical action or gravity
13 which locks into place when extended or the pointed, metallic shaft
14 is exposed by the removal of the cap or cover on the device.

15 (20) As used in this section, a “rifle” means a weapon designed
16 or redesigned, made or remade, and intended to be fired from the
17 shoulder and designed or redesigned and made or remade to use
18 the energy of the explosive in a fixed cartridge to fire only a single
19 projectile through a rifled bore for each single pull of the trigger.

20 (21) As used in this section, a “shotgun” means a weapon
21 designed or redesigned, made or remade, and intended to be fired
22 from the shoulder and designed or redesigned and made or remade
23 to use the energy of the explosive in a fixed shotgun shell to fire
24 through a smooth bore either a number of projectiles (ball shot) or
25 a single projectile for each pull of the trigger.

26 (22) As used in this section, an “undetectable firearm” means
27 any weapon which meets one of the following requirements:

28 (A) When, after removal of grips, stocks, and magazines, it is
29 not as detectable as the Security Exemplar, by walk-through metal
30 detectors calibrated and operated to detect the Security Exemplar.

31 (B) When any major component of which, when subjected to
32 inspection by the types of X-ray machines commonly used at
33 airports, does not generate an image that accurately depicts the
34 shape of the component. Barium sulfate or other compounds may
35 be used in the fabrication of the component.

36 (C) For purposes of this paragraph, the terms “firearm,”
37 “major component,” and “Security Exemplar” have the same
38 meanings as those terms are defined in Section 922 of Title 18 of
39 the United States Code.



1 All firearm detection equipment newly installed in nonfederal
2 public buildings in this state shall be of a type identified by either
3 the United States Attorney General, the Secretary of
4 Transportation, or the Secretary of the Treasury, as appropriate, as
5 available state-of-the-art equipment capable of detecting an
6 undetectable firearm, as defined, while distinguishing innocuous
7 metal objects likely to be carried on one's person sufficient for
8 reasonable passage of the public.

9 (23) As used in this section, a "multiburst trigger activator"
10 means one of the following devices:

11 (A) A device designed or redesigned to be attached to a
12 semiautomatic firearm which allows the firearm to discharge two
13 or more shots in a burst by activating the device.

14 (B) A manual or power-driven trigger activating device
15 constructed and designed so that when attached to a semiautomatic
16 firearm it increases the rate of fire of that firearm.

17 (24) As used in this section, a "dirk" or "dagger" means a
18 knife or other instrument with or without a handguard that is
19 capable of ready use as a stabbing weapon that may inflict great
20 bodily injury or death. A nonlocking folding knife, a folding knife
21 that is not prohibited by Section 653k, or a pocketknife is capable
22 of ready use as a stabbing weapon that may inflict great bodily
23 injury or death only if the blade of the knife is exposed and locked
24 into position.

25 (25) As used in this section, "large-capacity magazine" means
26 any ammunition feeding device with the capacity to accept more
27 than 10 rounds, but shall not be construed to include any of the
28 following:

29 (A) A feeding device that has been permanently altered so that
30 it cannot accommodate more than 10 rounds.

31 (B) A .22 caliber tube ammunition feeding device.

32 (C) A tubular magazine that is contained in a lever-action
33 firearm.

34 (d) Knives carried in sheaths which are worn openly suspended
35 from the waist of the wearer are not concealed within the meaning
36 of this section.

37 *SEC. 11. No reimbursement is required by this act pursuant to*
38 *Section 6 of Article XIII B of the California Constitution because*
39 *the only costs that may be incurred by a local agency or school*
40 *district will be incurred because this act creates a new crime or*



1 *infraction, eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section 17556 of*
3 *the Government Code, or changes the definition of a crime within*
4 *the meaning of Section 6 of Article XIII B of the California*
5 *Constitution.*

6
7
8
9
10
11
12

All matter omitted in this version of the bill appears in the bill as amended in the Assembly, March 27, 2001 (JR 11)

